

NOT FOR PUBLICATION

FEB 25 2008

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUAN FERNANDO FORERO,

Plaintiff - Appellant,

v.

WES MYERS, an individual; et al.,

Defendants - Appellees.

No. 06-15624

D.C. No. CV-04-00470-  
HDM/RAM

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Howard D. McKibben, District Judge, Presiding

Submitted February 12, 2008\*\*  
San Francisco, California

Before: D.W. NELSON, KLEINFELD, and HAWKINS, Circuit Judges.

The officer had probable cause to believe that Myers had attempted to kidnap the girl. He had at least the following: (1) the girl gave an initial account;

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

(2) a license plate check showed that the defendant's car was where the offense occurred, when it occurred; (3) the defendant's prior conduct was consistent with intense and unlawful sexual activity directed toward young girls of about the same age, and as we held in Burrell v. McIlroy,<sup>1</sup> prior criminal history may be considered as part of the totality of circumstances, though it alone cannot establish probable cause;<sup>2</sup> (4) the girl identified the defendant as the perpetrator; (5) the defendant gave the appearance that he was fleeing the grandparents and the girl when the girl identified the defendant and his car in the parking lot; and (6) the girl stated that the perpetrator had grabbed at her backpack. Though the girl gave a different account at the preliminary hearing, recanting her previous account and identification of the defendant, and the charges were dismissed, that does not vitiate the probable cause the police officer had for the arrest. Because there was probable cause, we need not reach the question of qualified immunity.

AFFIRMED.

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<sup>1</sup> Burrell v. McIlroy, 464 F.3d 852 (9th Cir. 2006).

<sup>2</sup> Id. at 858 n.3.